

*Exhibit A*

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

YOUNG AGAIN PRODUCTS, INC.,	)	CASE NO: 07-3019-H4-ADV
	)	
Plaintiff,	)	Houston, Texas
	)	
vs.	)	Friday, May 2, 2008
	)	
SUPPLEMENT SPOT, LLC., ET AL.,	)	(10:14 a.m. to 11:14 a.m.)
	)	
<u>Defendants.</u>	)	

#149 - REASONABLENESS OF ATTORNEYS FEES;

#156 - MOTION TO COMPEL

BEFORE THE HONORABLE JEFF BOHM,  
UNITED STATES BANKRUPTCY JUDGE

Appearances: See next page

Courtroom Deputy: Vangie Attaway

Court Recorder: Mary Kallie

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EXCEPTIONAL REPORTING SERVICES, INC

**APPEARANCES FOR:**

**Plaintiff:**

**MARGARET M. McCLURE, ESQ  
2 Houston Center  
909 Fannin, Suite 3810  
Houston, TX 77010**

**John Acord:**

**JOE ALFRED IZEN, JR., ESQ  
State Bar Information  
5222 Spruce Street  
Bellaire, TX 77401**

**THOMAS FREEMAN, ESQ  
MARK FREEMAN, ESQ  
Freeman & Freeman  
One Church St., Suite 200  
Rockville, MD 20850**

**Ben Floyd, Trustee:**

**RANDALL RIOS, ESQ  
Munsch Hardt Kopf & Harr  
700 Louisiana, Suite 4600  
Houston, TX 77002**

**Office of the U.S.  
Trustee:**

**STEPHEN STATHAM, ESQ  
515 Rusk  
Houston, TX 77002**

Houston, Texas; Friday, May 2, 2008; 10:14 a.m.

(Messrs. Thomas Freeman and Mark Freeman Appeared  
Telephonically)

(Call to Order)

**THE COURT:** Okay. Let's now go to the next matter on the docket. This is the Adversary Proceeding 07-3019. It's *Young Again Products, Inc., Plaintiff versus Supplement Spot, LLC, et al, the Defendants*. And we've got Mr. Acord's Motion to Compel Discovery. We've also got Docket F156. Docket 149 is the attorneys' fees issue as to reasonableness of the attorneys' fees incurred by the Plaintiffs.

Let me go ahead and get appearances from counsel first, please.

**MS. McCLURE:** Yes, your Honor. Margaret McClure, M-c-C-l-u-r-e, on behalf of Young Again Products, Inc.

**THE COURT:** Thanks.

**MR. RIOS:** Good morning, Judge Bohm. Randy Rios appearing on behalf of Ben Floyd, Chapter 11 Trustee.

**THE COURT:** Thanks.

**MR. IZEN:** Joe Alfred Izen, Jr. here for the Defendant Acord who's an individual in this case.

**THE COURT:** Thanks, Mr. Izen.

**MR. STATHAM:** Good morning, your Honor. Steve Statham for U.S. Trustee for a very limited purpose.

**THE COURT:** All right. Thanks, Mr. Statham.

1           Who's on the phone, please?

2           **MR. THOMAS FREEMAN:** Good morning, your Honor. This  
3 is Thomas Freeman and Mark Freeman on behalf of Plaintiff,  
4 Young Again Products, Inc.

5           **THE COURT:** All right. Thank you.

6           Okay. Mr. Statham, do you want to make a statement  
7 to begin with since you're here for a limited purpose?

8           **MR. STATHAM:** Thank you, your Honor.

9           Reluctantly, as an officer of the Court I'm required  
10 to come forward and reveal information I have learned, and that  
11 is, that Mr. Izen is currently on a fully probated suspension  
12 from the State Bar of Texas. As I understand the way the rules  
13 of discipline have been interpreted here in the Southern  
14 District, that may impact his ability to appear before the  
15 Court. I know there's a lot of disagreement about how that  
16 rule is interpreted. But be that as it may, Mr. Izen's status  
17 may be in question at this moment.

18           **THE COURT:** Mr. Izen, first of all, let me have you  
19 confirm for the record that what Mr. Statham says you have a --

20           **MR. IZEN:** Yes, your Honor. I have reported the  
21 status to the Northern District of Texas and they said that I  
22 could practice.

23           **THE COURT:** Have you reported it to the Southern  
24 District of Texas?

25           **MR. IZEN:** I believe that I have but I'll check when

1 I get back to the office. And as far as the probation is  
2 concerned, it was a two-year. It had to do with advertising.  
3 It was a State Bar case.

4 **THE COURT:** Bear with me. I'm going to the District  
5 Court local rules.

6 **(Pause)**

7 What I'm looking at says:

8 "A lawyer who is disbarred or suspended by consent or  
9 agreement or who resigns from the bar of another  
10 court in the United States to avoid further  
11 discipline must advise this Court in writing and  
12 immediately cease to practice before this Court."

13 And by "this Court" it means the District Court or  
14 the Bankruptcy Court, a unit of the District Court.

15 "The lawyer shall furnish a certified copy of the  
16 disciplinary order or letter of resignation to the  
17 Clerk."

18 Mr. Izen, have you furnished a certified copy -- is  
19 there a disciplinary order in effect?

20 **MR. IZEN:** There is a judgment of the State Court is  
21 what it is, if you would refer to that as a disciplinary order.  
22 It's a judgment of probation. It's not a suspension; it's not  
23 any of those other things that's described because it has  
24 "probated" in front of it. That's what the Northern District  
25 ruled. But their rule was different than this one. Their rule

1 was that they would impose the same discipline and they asked  
2 me to respond and show cause. I did and they said they  
3 shouldn't have ever issued a show cause on me. I can get that  
4 copy for the Court.

5 **THE COURT:** All right. Well, I appreciate your  
6 comments about the Northern District, but I'm a Southern  
7 District judge and I've got to worry about enforcing the  
8 Southern District rules. Let me just go through this.

9 "A lawyer who is suspended by consent or agreement or  
10 who resigns from the bar of another court must advise  
11 this Court in writing and immediately cease to  
12 practice before this Court."

13 You're not sure whether you've notified the Clerk's  
14 Office.

15 **MR. IZEN:** I'm not sure but I have a probate and I  
16 don't have an active suspension. I err on the side of  
17 disclosure versus non-disclosure.

18 **THE COURT:** Okay. You haven't been disbarred.

19 **MR. IZEN:** No, sir.

20 **THE COURT:** And you haven't been suspended.

21 **MR. IZEN:** No, sir.

22 **THE COURT:** Mr. Statham?

23 **MR. STATHAM:** Your Honor, I don't want to throw a  
24 monkey wrench, but I've drafted a bunch of these things in my  
25 prior life as a State Bar prosecutor, and the judgments



1 inevitably say suspension probated for a period of X. And so  
2 the judgment may actually be the best proof of the true status.  
3 I don't know to quibble with Mr. Izen about the wording, but  
4 the judgment may be the best proof of this.

5 **THE COURT:** So in other words, Mr. Statham, if the  
6 judgment says he is suspended and then the next paragraph says  
7 the suspension is probated, what would the Trustee's position  
8 be, the U.S. Trustee's position be?

9 **MR. STATHAM:** It would be referred to as a probated  
10 suspension. But not to quibble, but it is a suspension; it is  
11 probated.

12 **THE COURT:** Right.

13 **MR. STATHAM:** The terms of which are probated --

14 **THE COURT:** Right.

15 **MR. STATHAM:** -- for a period of time depending upon  
16 Mr. Izen not violating the rules of discipline or other  
17 conditions.

18 **THE COURT:** And so as I read this rule it says:  
19 Look, if you've been suspended, whether it's probated or not,  
20 you are supposed to immediately -- you are supposed to report  
21 to the Court and immediately cease to practice. And then the  
22 lawyer shall furnish a certified copy to the Clerk. And then  
23 as I understand it, the Chief Judge of the Southern District in  
24 this case, Chief Judge Hayden Head, who sits in Corpus Christi,  
25 would receive a certified copy of the disciplinary order and



1 would either keep it himself or refer it to another District  
2 Judge; or could assign it to a bankruptcy judge in order to  
3 determine whether any action needs to be taken.

4 **MR. STATHAM:** Yes, sir. That's my understanding.

5 **THE COURT:** So the issue today is, is Mr. Izen  
6 allowed to practice in the Southern District of Texas as of  
7 right now.

8 **MR. STATHAM:** Yes, sir.

9 **THE COURT:** Let's take a brief break. Let me think  
10 on this. I need to give my staff a break anyway since we've  
11 been going. Why don't we come back at 10:30.

12 **MR. STATHAM:** Thank you, your Honor.

13 **THE COURT:** Thanks.

14 **THE CLERK:** All rise.

15 **(Recess taken from 10:22 a.m. to 10:47 a.m. / Parties**  
16 **present)**

17 **THE COURT:** Be seated, please. We're back on the  
18 record.

19 Okay. Mr. Izen, first I checked your file.

20 **MR. IZEN:** Yes, sir.

21 **THE COURT:** You have not sent a letter to the Clerk  
22 of Court giving notice and furnishing a certified copy of the  
23 Order. As I understand it, you were suspended but fully  
24 probated.

25 **MR. IZEN:** Yes, sir.

1           **THE COURT:** Which the best analogy I can come up with  
2 is it means the appropriate authorities have said you're  
3 skating on thin ice but you haven't fallen through the ice yet.

4           **MR. IZEN:** I hope that's not true. I don't have good  
5 enough knees to skate on thin ice.

6           **THE COURT:** And so you're still allowed to practice  
7 in the courts of the state of Texas, no question about that.  
8 Am I right?

9           **MR. IZEN:** Yes, sir.

10          **THE COURT:** All right. So the issue is, going back  
11 to what Mr. Statham said, is does the phrase a lawyer who is  
12 suspended, does that lawyer need to "immediately cease to  
13 practice before this Court"?

14               Interpretation one is because you are suspended with  
15 full probation, fully probated, that you could continue to  
16 practice in this court. Presumably, Mr. Statham, that's  
17 interpretation one.

18               And then interpretation two is: No, you must  
19 immediately cease to practice before this Court because you've  
20 been suspended and the local rule doesn't distinguish between  
21 suspension with fully probated suspension versus a partially  
22 probated or a non-probated suspension.

23               Mr. Statham, do you think I've correctly stated the  
24 two interpretations?

25          **MR. STATHAM:** Yes, sir. That's correct.

1           **THE COURT:** Okay. I don't know the answer to this  
2 question, and so here's what I'm going to do. Mr. Acord  
3 initially represented himself pro se, concluded that he didn't  
4 like the results he was getting and so went out and hired  
5 Mr. Izen and presumably still has confidence in him because  
6 Mr. Izen has continued to represent Mr. Acord and has been  
7 filing pleadings.

8           I am reluctant today to say that you can't practice  
9 for purposes of today's hearing since this was just raised, at  
10 least this is the first time I've had to deal with this today.  
11 But, Mr. Izen, by the same token you need to -- I want you  
12 today, and I mean before close of business today, to send a  
13 letter to the Clerk's Office with a copy, certified copy, of  
14 the disciplinary order.

15           How long has this suspension fully probated been in  
16 effect? When was it issued?

17           **MR. IZEN:** My recollection --

18           **THE COURT:** And let me say you can remain seated,  
19 Mr. Izen. I know that you've got some difficulty standing and,  
20 believe me, you can just remain seated. No need to stand.

21           **MR. IZEN:** The trial of the case that this resulted  
22 out of, the jury trial which is on appeal, was terminated in  
23 September. I believe it was September 13, 2007. Now, it was  
24 not printed in the *Bar* for some reason, the *Bar Journal*, for  
25 six months. I'm not going to quibble about what the time was.

1 I think it was effective from the date the Court entered the  
2 judgment.

3 **THE COURT:** My concern is, is that you need to comply  
4 with -- what I'm looking at so that you know, is if you go to  
5 the local rules for the Southern District of Texas and look at  
6 Appendix A, it's entitled The Rules of Discipline United States  
7 District Court Southern District of Texas. This particular  
8 Appendix is effective Jun 19<sup>th</sup>, 2007 as a result of an Order  
9 signed by Chief Judge of the Southern District, Hayden Head.

10 The Rule 4 requires you, it says, "The lawyer shall  
11 furnish a certified copy of the disciplinary order to the  
12 Clerk." That you need to do.

13 So what I'm going to do is this. I'm going to let  
14 you represent Mr. Acord today for purposes of this hearing.  
15 The condition I'm doing that on is to tell you and order you to  
16 furnish a certified copy of the disciplinary order to the  
17 Clerk's Office by close of business today. As I understand the  
18 procedure, the Clerk will then give notice to Chief Judge  
19 Hayden Head, who will then either keep the matter himself or  
20 refer the matter out to another judge. And he does so  
21 pursuant, as I understand it, to Rule 5 of the Appendix. So  
22 you can read the rules and see what will happen.

23 I agree with Mr. Statham that there's two ways to  
24 interpret Rule 4(a), and suspension fully probated is one way  
25 to interpret it, is to say: Okay, you don't need to cease to

1 practice. But the other interpretation is: No, no.  
2 Suspension is suspension, period, in a sense whether or not  
3 it's fully probated or not, in which event you would need to  
4 cease to practice.

5 My view of the world is certainly I want to enforce  
6 this rule and make sure I do it right. And I'm not sure which  
7 interpretation is the correct one, and I'm going to leave that  
8 to Judge Head. Given the circumstances that I have in this  
9 case where Mr. Acord was representing himself pro se and went  
10 and hired you, Mr. Izen, because he obviously concluded he  
11 needed capable counsel, I don't want to just bring a screeching  
12 halt to today's hearing and tell you you can't practice for  
13 purposes of today's hearing. But I do insist that you furnish  
14 a certified copy of the Order to the Clerk's Office by close of  
15 business today.

16 **MR. IZEN:** Your Honor, may I address the Court?

17 **THE COURT:** Sure.

18 **MR. IZEN:** I don't know how long this hearing will  
19 take, but I think I have a certified copy of the Judgment back  
20 at my office, but I'm not positive.

21 **THE COURT:** Well, all right.

22 **MR. IZEN:** So I would request until Monday at  
23 5:00 o'clock to get it to them. I'll try every way I can to  
24 get it to them by 5:00 o'clock. I know how you're concerned  
25 about time limits. When I sent the thing to the Northern

1 District they required a certified copy and I had it, but I  
2 don't know if I retained the certified copy.

3 **THE COURT:** Fair enough, Mr. Izen. Let's do it by  
4 close of business on Monday, May 5.

5 **MR. IZEN:** Yes, sir. Thank you.

6 **THE COURT:** Okay. All right. Now, let's go to the  
7 merits here.

8 **MR. STATHAM:** Your Honor, may I be excused? My  
9 presence is no longer --

10 **THE COURT:** Mr. Statham, I appreciate it. As always,  
11 I appreciate you raising the issue, and the best way I can  
12 harmonize it right now is to do what I've done. And you  
13 certainly are excused. Have a good weekend.

14 **MR. STATHAM:** Thank you, sir. I appreciate it.

15 **THE COURT:** Thanks.

16 **(Mr. Statham excused)**

17 Let's go to the merits, the reasonableness of fees  
18 first. Ms. McClure.

19 **MS. McCLURE:** Yes, your Honor. Pursuant to the  
20 Court's order I was to provide the timesheet, if you will, for  
21 working on the two motions for sanctions against Mr. Acord for  
22 failure to pay attorneys' fees pursuant to the Court's  
23 sanctions orders. I believe the date that I was supposed to  
24 give that time to Mr. Izen was March 7<sup>th</sup>. Mr. Izen had until  
25 March 17<sup>th</sup> to either have Mr. Acord pay the money to the

1 Plaintiff or file an objection to the reasonableness of the  
2 fees. He has filed that objection and request for hearing on  
3 the reasonableness of the attorneys' fees, so I guess  
4 procedurally Mr. Izen has the burden to prove that they're not  
5 reasonable.

6 We did file a motion with the Court asking that  
7 Mr. Mark Freeman and Thomas Freeman be allowed to testify as to  
8 their portion of the fees as to reasonableness by telephone,  
9 and this Court granted that motion. So they're prepared to  
10 stand by their fees; I'm prepared to stand by my fees. However  
11 the Court chooses to go forward.

12 **THE COURT:** Okay. Mr. Izen, do you want to examine?

13 **MR. IZEN:** Actually, as far as examining is concerned  
14 my objection is centered in on how many motions for contempt  
15 there were and sanctions. And my concern was that there is  
16 requests for attorneys' fees going back to 2-4-08. And I'm  
17 concerned that there were attorneys' fees of awards already  
18 given that should have included those fees. That was the  
19 concern and in looking at this I couldn't discern that. I  
20 couldn't understand why there would be a 2-4-08 billing for a  
21 motion that was prepared 2-18-08 in light of the docket sheet  
22 showing of other awards of attorneys' fees.

23 And so, basically, about four to six hours of this is  
24 what's in dispute. I have no desire to dispute the other  
25 items. I just wanted attorneys' fees that pertained to the

1 tailing off of this contempt proceeding and tailing off of the  
2 enforcement and the fees that are awarded -- and this is like  
3 my opening -- should only be those fees that were reasonable  
4 for preparing that last -- or those last hearings on that last  
5 motion. And so I think it's incumbent on them requesting the  
6 fees to prove that a 2-4-08 billing and a 2-06-08 billing,  
7 several of them there, are included in the motion, which was  
8 admittedly by their description prepared and filed on  
9 February 18<sup>th</sup>, 2008.

10 And I move the Court to take judicial notice of its  
11 entries on the docket of the times it awarded attorneys' fees.  
12 Because what you don't want to have happen here is you don't  
13 want someone saying I should have included this fee in my  
14 earlier application so I put it in this one. In other words,  
15 each fee application should be a cut-off for the work that was  
16 done on a particular motion. That's where I'm coming from.  
17 That was the only reason for the objection. That involves two  
18 to three thousand dollars though, and I couldn't reach an  
19 agreement on it.

20 **MS. McCLURE:** May I speak?

21 **THE COURT:** Please, Ms. McClure.

22 **MS. McCLURE:** Your Honor, on February 4<sup>th</sup>, 2008, the  
23 Freemans' law firm and I started working on an emergency motion  
24 for sanctions for Mr. Acord's failure to pay fees -- excuse me  
25 and let me get it. We filed the motion on February 6<sup>th</sup>.



1           **THE COURT:** Right.

2           **MS. McCLURE:** Expedited motion for sanctions. The  
3 Court Order that is the subject of that motion was the  
4 January 31<sup>st</sup>. The Court signed -- I apologize -- the Court  
5 Order on December 18<sup>th</sup>, 2007 ordering that Mr. Acord pay \$3,410  
6 by January 31<sup>st</sup>, 2008. That was the first motion.

7           The second motion comes along because the Court had  
8 entered a second Court Order ordering Mr. Acord to pay fees.  
9 That Court Order was signed on January 15<sup>th</sup>, 2008, where  
10 Mr. Acord was ordered to pay \$8,052 by 5:00 p.m. on  
11 February 15<sup>th</sup>, 2008. That motion was filed on February 18<sup>th</sup>,  
12 2008.

13           Both of them, your Honor, were after non-compliance  
14 with the Court's order. The one to pay by January 31<sup>st</sup> was  
15 filed February 6<sup>th</sup>. The one ordering to be paid by January --  
16 excuse me -- by February 15<sup>th</sup> was filed on February 18<sup>th</sup>. The  
17 excess fees, if you will, concerning all of this was  
18 Mr. Acord's response complaining about indigency and the fact  
19 that he wanted to pay \$1,500 a month.

20           So the time involved in preparing these two motions  
21 and conducting the hearing was having to go through documents  
22 to prove that Mr. Acord had the wherewithal financially to take  
23 care of the situation. As the Court can recall, the Court got  
24 very upset with Mr. Acord for paying \$1,300 a month for a  
25 Mercedes payment; ordered that \$8,052 be paid by the next day;

1 and then the other money had already been paid. Okay. So one  
2 had been complied with; one had not.

3 Everything is legitimate. As officers of the Court I  
4 can tell you, your Honor, we have never, if you will, double-  
5 dipped or put things on time entries that we thought, okay, we  
6 weren't able to recover the last go around so we're going to  
7 sneak it in on this one. And the Freemans certainly will agree  
8 with me.

9 If the Court sees starting on February 4<sup>th</sup>, '08 all  
10 of the time entries are for Thomas Freeman and Mark Freeman, I  
11 didn't even bill for any time, your Honor, until February 27<sup>th</sup>  
12 when I started preparing for the hearing. So there's no  
13 duplication of time.

14 This Court has already determined that the Freemans'  
15 \$185 an hour for their time and my \$295 an hour for my time,  
16 and of course paralegal time in my office for \$75, is  
17 reasonable in this district. There shouldn't be any issue. As  
18 officers of the Court, we stand by this as not being  
19 duplicative or pertaining to any other motions other than these  
20 two and preparing for and attending the hearings.

21 **MR. IZEN:** I have a brief response --

22 **THE COURT:** Mr. Izen, please.

23 **MR. IZEN:** -- with your permission. The concern is  
24 an entry on 2-4-08, draft motion for sanctions for preparing a  
25 motion that's dated December 12<sup>th</sup>, 2007. Now, I don't know the

1 case as well as Ms. McClure does or this Court, but I'm certain  
2 that Mr. -- as I recall, Mr. Acord came down here on at least  
3 three or four hearings and this December 12<sup>th</sup>, 2007 Order I  
4 don't think relates to this 2-18 draft second motion, '08; and  
5 I don't think it relates to any request for a pay-out plan,  
6 which the Court initially said that it would entertain if it  
7 was necessary for Mr. Acord to have counsel. The Court later  
8 on determined that it was not because of what the Court  
9 determined to be personal living expenses and other things that  
10 he was able to pay.

11 So that's the concern. I'm not contesting the \$185  
12 an hour. I'm not contesting the 295 hour [sic]. The focus of  
13 this hearing is that how could I not object to a bill written  
14 in this fashion where it says that they're billing on 2-4-08  
15 2.2 hours for a motion prepared way back on December 12<sup>th</sup>.  
16 Maybe I'm missing something.

17 **MS. McCLURE:** Your Honor?

18 **THE COURT:** All right. Ms. McClure?

19 **MR. IZEN:** The December 12<sup>th</sup> motion is not enforced  
20 until January 31<sup>st</sup>, 2007. I don't think so. I mean let's look  
21 at this draft second motion for sanctions. It's clear that the  
22 2-18-08 says "draft second motion for sanctions." The 2-06-08  
23 and 2-06-08 [sic] says "finalize emergency motion for sanctions  
24 and multiple telephone conferences," which occurred 12 days  
25 before that.

1           So, you know, I think that there was billings here  
2 that I don't think relate to the final series of hearings we  
3 had, the two hearings or whatever it is that to do with the  
4 issue of the pay-out plan and the final tail off of the  
5 documents you ordered to be produced that you added to the  
6 contempt Order. I think we had something on that, maybe one or  
7 two issues about documents under the contempt Order.

8           And so that's the concern. And somebody could  
9 testify to this, I guess. These are Mr. Freeman's or the  
10 Freeman's billings. They're not Ms. McClure's. But I don't  
11 understand at this point or I would have agreed to it based on  
12 the way they wrote out their billing how that relates.

13           **THE COURT:** All right.

14           **MS. McCLURE:** Your Honor?

15           **THE COURT:** Go ahead, Ms. McClure. And then,  
16 Mr. Freeman, I'm going to ask you to respond as well.

17           **MS. McCLURE:** Sure. The February 4<sup>th</sup> entry, your  
18 Honor, refers to the December 12<sup>th</sup>, 2007 court order. That is  
19 a typographical error. I take full blame and responsibility  
20 for that.

21           It should have said "December 18<sup>th</sup>." And when I  
22 emailed these time entries to Mr. Izen I never got any  
23 communications from Mr. Izen concerning his concerns, if you  
24 will, about these time entries prior to him waiting until  
25 March 17<sup>th</sup> to file the objection to the fees. So this is the

1 first other than his objection that he filed with the Court.  
2 He did not communicate with me for me to look into his concerns  
3 about a December 12<sup>th</sup>, 2007 court order or motion. And if he  
4 had, we could have gotten that resolved and cleared up instead  
5 of wasting this Court's time.

6 **THE COURT:** Okay. Mr. Freeman?

7 **MR. THOMAS FREEMAN:** Yes, sir. I have a comment that  
8 hopefully will clarify the record. The February 4 entry was my  
9 drafting of the original motion for sanctions and fees in  
10 response to Mr. Acord's failure to pay this Court's ordered  
11 amount, which this Court ordered on November -- excuse me --  
12 December the 18<sup>th</sup>. It was a December 12<sup>th</sup> hearing that your  
13 Honor may recall in which your Honor found Mr. Acord in  
14 contempt of a November 13 order on documents. And following  
15 that hearing on December 18, there was an order for \$3,410 to  
16 be paid to the offices of Ms. McClure by January 31. On  
17 January 31, payment was not received and I commenced  
18 preparation of the first motion, which is the time entry you  
19 see there.

20 As you'll see, there's an additional entry two days  
21 later in which Mr. Mark Freeman completed that emergency  
22 motion. The reason he had to come in to complete the motion  
23 was that I had to travel for depositions in this case to Dallas  
24 and so I was unavailable to complete the motion. Mr. Mark  
25 Freeman, who is here with me now, completed the motion on

1 the 6<sup>th</sup>. There was a follow-up conversation with Ms. McClure,  
2 teleconferences on that day by myself, as well actually with a  
3 conference with Mr. Acord himself. Those calls on the 6<sup>th</sup> were  
4 also -- were actually taken in Dallas all in connection with  
5 the filing of the first motion.

6 The second motion, as Ms. McClure stated, was filed  
7 after Mr. Acord failed to comply with the Court Order dated  
8 January 15. And in that Order he was required to pay \$8,052  
9 and pay that amount to Ms. McClure by February 15. The payment  
10 was not received by 5:00 p.m. on February 15, so I commenced  
11 the drafting of the second motion for sanctions on February  
12 the 18<sup>th</sup>.

13 Both of these motions, your Honor, were the subject  
14 of the hearing before your Honor that Ms. McClure attended, I  
15 believe it was on March the 3<sup>rd</sup>, as her time indicates. And I  
16 think it was thereafter that your Honor gave Mr. Izen some time  
17 to consider the amounts and then if he wanted to file  
18 objections he could do so. And that's what he has done.

19 **THE COURT:** Okay. I think I've heard enough. I will  
20 accept the representations. I don't think there's any double-  
21 billing going on or somehow trying to catch up from past  
22 entries. I'm going to approve all the fees. I think they're  
23 reasonable. I think they were certainly necessary.

24 So, Ms. McClure, if you would submit an Order -- why  
25 don't I ask you to do so within one week -- approving all of

1 the fees. And you can set forth in there that I've made a  
2 finding that they were both necessary and reasonable.

3 **MR. IZEN:** May I point out one other thing to the  
4 Court?

5 **THE COURT:** No, Mr. Izen. I've heard enough. Given  
6 the circumstances I don't think these are manufactured time  
7 entries they're somehow trying to catch up from the past. And  
8 so I've made my ruling. Let's move on.

9 Next up is Mr. Acord's Motion to Compel Discovery.  
10 I've read the pleadings. I want documents produced, okay?  
11 What's good for the goose is good for the gander. I want the  
12 documents produced. I don't want Mr. Acord to have to fly up  
13 to Maryland. I want the documents produced so that he's got  
14 the documents so that at trial there's not any surprise.  
15 That's what I want; that's what I expect. If the documents are  
16 not going to be produced, then I'm going to strike the  
17 pleadings. It's that simple. I don't care if it cost a couple  
18 of hundred bucks to get the documents down to Texas, I want  
19 them produced. And so I'm putting the Plaintiff on notice. If  
20 you ain't going to produce them, you're going to walk out of my  
21 court with a judgment that says take nothing and you are  
22 forever barred. It's that simple, okay?

23 **MR. IZEN:** I think that satisfies us. There's the  
24 issue of the depositions and the scheduling. I'm not certain,  
25 your Honor, that in the position that I was in in scheduling

1 the depositions, you know, they weren't scheduled right,  
2 whatever; everybody wants to use their calendars. I was on a  
3 real short leash, as I explained in the motion.

4 **THE COURT:** And let me just say. I'm not granting  
5 any continuances in this. I've got a motion sitting in my  
6 inbox. This case is going to trial as set forth in the Amended  
7 Scheduling Order, no deadline extensions, nothing. This case  
8 is acrimonious, it's in other courts; and those other courts  
9 may have granted continuances, but I am not. We're going to  
10 try this thing and we're going to keep it on schedule. And as  
11 I said, if documents aren't going to be produced, I ain't going  
12 to give a judgment as anything other than take nothing.

13 **MR. IZEN:** The discovery deadline, what do you do  
14 with that?

15 **THE COURT:** I'm not extending it.

16 **MR. IZEN:** Okay. Well, then it's --

17 **THE COURT:** We're going to trial. Mr. Acord took the  
18 risk of representing himself pro se and he finally went out and  
19 got you as his counsel, and that's good. But I'm not extending  
20 deadlines. This case is going to be tried as scheduled because  
21 I am not going to continue. And my feeling about this case is  
22 the more continuances I grant the more acrimonious it will get,  
23 the more discovery problems it will get and the more time we're  
24 going to waste in this courtroom on discovery disputes. We're  
25 going to try it. We're going to put people under oath. I'm



1 going to take the time to try it. But I'm not granting any  
2 deadline extensions, period, end of sentence.

3 And, Mr. Rios, that includes the motion you filed the  
4 other day. If the parties want to talk settlement, that's  
5 fine. But sending me a motion on April 30<sup>th</sup>, the deadline,  
6 asking for extension doesn't cut it with me, particularly in  
7 this case. This is an acrimonious case, we are going to try  
8 it, no extensions, period, end of sentence, okay?

9 Get the documents produced. If they ain't produced,  
10 it will be a take-nothing judgment. Plaintiffs stop fiddling  
11 around, give Mr. Acord the documents.

12 And with that the Court's in recess.

13 **THE CLERK:** All rise.

14 **(This proceeding was adjourned at 11:14 a.m.)**

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CERTIFICATION

I certify that the foregoing is a correct transcript from the electronic sound recording of the proceedings in the above-entitled matter.



Signed

June 28, 2008

Dated

TONI HUDSON, TRANSCRIBER